

THE HONORABLE THOMAS O. RICE

Larry J. Kuznetz, WSBA No. 8697  
Sarah N. Harmon, WSBA No. 46493  
POWELL, KUZNETZ & PARKER, P.S.  
316 W. Boone, Ste. 380  
Spokane, WA 99201-2346  
PHONE: (509)455-4151  
FAX: (509)455-8522

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

LYNNE GARDNER and BRET  
GARDNER, husband and wife,

Plaintiffs,

vs.

WELLS FARGO BANK, NA,

Defendant.

No. 2:19-cv-00207-TOR

**STIPULATED PROTECTIVE  
ORDER**

**1. PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with FRCP 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public

1 disclosure and use extends only to the limited information or items that are entitled  
2 to confidential treatment under the applicable legal principles, and it does not  
3 presumptively entitle parties to file confidential information under seal.

4 2. “CONFIDENTIAL” MATERIAL

5 “Confidential” material shall include the following documents and tangible  
6 things produced or otherwise exchanged: Materials relating to any privileged,  
7 confidential, or nonpublic information, including, but not limited to, trade secrets,  
8 research, design, development, financial, technical, marketing, planning,  
9 personal, or commercial information, as such terms are used in the Federal Rules  
10 of Civil Procedure (“FRCP”) and any applicable case law interpreting FRCP  
11 26(c)(1)(G); contracts; non-public compilations of retail prices; proprietary  
12 information; vendor agreements; personnel files and personal information of  
13 employees or applicants; sensitive personal or business information including but  
14 not limited to payroll and salary information, financial records and information,  
15 social security numbers, and medical records and medical information;  
16 claim/litigation information; and nonpublic policies and procedures shall be  
17 deemed Confidential.

18 3. SCOPE

19 The protections conferred by this agreement cover not only confidential  
20 material (as defined above), but also (1) any information copied or extracted from  
21 confidential material; (2) all copies, excerpts, summaries, or compilations of  
22 confidential material; and (3) any testimony, conversations, or presentations by  
23 parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover  
2 information that is in the public domain or becomes part of the public domain  
3 through trial or otherwise.

4 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

5 4.1 Basic Principles. A receiving party may use confidential material  
6 that is disclosed or produced by another party or by a non-party in connection with  
7 this case only for prosecuting, defending, or attempting to settle this litigation.  
8 Confidential material may be disclosed only to the categories of persons and under  
9 the conditions described in this agreement. Confidential material must be stored  
10 and maintained by a receiving party at a location and in a secure manner that  
11 ensures that access is limited to the persons authorized under this agreement.

12 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
13 otherwise ordered by the court or permitted in writing by the designating party, a  
14 receiving party may disclose any confidential material only to:

15 (a) plaintiffs, defendant, and the receiving party’s counsel of  
16 record in this action, as well as employees of counsel to whom it is reasonably  
17 necessary to disclose the information for this litigation;

18 (b) the officers, directors, and employees (including in house  
19 counsel) of the receiving party to whom disclosure is reasonably necessary for  
20 this litigation, unless the parties agree that a particular document or material  
21 produced is for Attorney’s Eyes Only and is so designated;

22 (c) experts and consultants to whom disclosure is reasonably  
23 necessary for this litigation and who have signed the “Acknowledgment and  
24 Agreement to Be Bound” (Exhibit A);

25 (d) the court, court personnel, and court reporters and their staff;  
26

1 (e) copy or imaging services retained by counsel to assist in the  
2 duplication of confidential material, provided that counsel for the party retaining  
3 the copy or imaging service instructs the service not to disclose any confidential  
4 material to third parties and to immediately return all originals and copies of any  
5 confidential material;

6 (f) witnesses in the action to whom disclosure is reasonably  
7 necessary and who have signed the “Acknowledgment and Agreement to Be  
8 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered  
9 by the court. Pages of transcribed deposition testimony or exhibits to depositions  
10 that reveal confidential material must be separately bound by the court reporter  
11 and may not be disclosed to anyone except as permitted under this agreement; and

12 (g) the author or recipient of a document containing the  
13 information or a custodian or other person who otherwise possessed or knew the  
14 information.

15 4.3 Filing Confidential Material. Before filing confidential material or  
16 discussing or referencing such material in court filings, the filing party shall  
17 confer with the designating party to determine whether the designating party will  
18 remove the confidential designation, whether the document can be redacted, or  
19 whether a motion to seal or stipulation and proposed order is warranted. During  
20 the meet and confer process, the designating party must identify the basis for  
21 sealing the specific confidential information at issue, and the filing party shall  
22 include this basis in its motion to seal, along with any objection to sealing the  
23 information at issue. FRCP 5.2 sets forth the procedures that must be followed  
24 and the standards that will be applied when a party seeks permission from the  
25 court to file material under seal. A party who seeks to maintain the confidentiality  
26

1 of its information must satisfy the requirements of FRCP 5.2, even if it is not the  
2 party filing the motion to seal. Failure to satisfy this requirement will result in the  
3 motion to seal being denied, in accordance with the strong presumption of public  
4 access to the Court's files.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1 Exercise of Restraint and Care in Designating Material for**  
7 **Protection**. Each party or non-party that designates information or items for  
8 protection under this agreement must take care to limit any such designation to  
9 specific material that qualifies under the appropriate standards. The designating  
10 party must designate for protection only those parts of material, documents, items,  
11 or oral or written communications that qualify, so that other portions of the  
12 material, documents, items, or communications for which protection is not  
13 warranted are not swept unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited.  
15 Designations that are shown to be clearly unjustified or that have been made for  
16 an improper purpose (*e.g.*, to unnecessarily encumber or delay the case  
17 development process or to impose unnecessary expenses and burdens on other  
18 parties) expose the designating party to sanctions.

19 If it comes to a designating party's attention that information or items that  
20 it designated for protection do not qualify for protection, the designating party  
21 must promptly notify all other parties that it is withdrawing the mistaken  
22 designation.

23 **5.2 Manner and Timing of Designations**. Except as otherwise provided  
24 in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as  
25 otherwise stipulated or ordered, disclosure or discovery material that qualifies for  
26

1 protection under this agreement must be clearly so designated before or when the  
2 material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic  
4 documents and deposition exhibits, but excluding transcripts of depositions or  
5 other pretrial or trial proceedings), the designating party must affix the word  
6 “CONFIDENTIAL” to each page that contains confidential material. If only a  
7 portion or portions of the material on a page qualifies for protection, the producing  
8 party also must clearly identify the protected portion(s) (e.g., by making  
9 appropriate markings in the margins).

10 (b) Testimony given in deposition or in other pretrial proceedings:  
11 the parties and any participating non-parties must identify on the record, during  
12 the deposition or other pretrial proceeding, all protected testimony, without  
13 prejudice to their right to so designate other testimony after reviewing the  
14 transcript. Any party or non-party may, within fifteen days after receiving the  
15 transcript of the deposition or other pretrial proceeding, designate portions of the  
16 transcript, or exhibits thereto, as confidential. If a party or non-party desires to  
17 protect confidential information at trial, the issue should be addressed during the  
18 pre-trial conference.

19 (c) Other tangible items: the producing party must affix in a  
20 prominent place on the exterior of the container or containers in which the  
21 information or item is stored the word “CONFIDENTIAL.” If only a portion or  
22 portions of the information or item warrant protection, the producing party, to the  
23 extent practicable, shall identify the protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
25 failure to designate qualified information or items does not, standing alone, waive  
26

the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with FRCP 5.2, if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose

(e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the



1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
2 A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
4 PROTECTED MATERIAL

5 When a producing party gives notice to receiving parties that certain  
6 inadvertently produced material is subject to a claim of privilege or other  
7 protection, the obligations of the receiving parties are those set forth in FRCP  
8 26(b)(5)(B). This provision is not intended to modify whatever procedure may be  
9 established in an e-discovery order or agreement that provides for production  
10 without prior privilege review. The parties agree to the entry of a non-waiver order  
11 under Fed. R. Evid. 502(d) as set forth herein.

12 10. NON TERMINATION AND RETURN OF DOCUMENTS

13 Within 60 days after the termination of this action, including all appeals,  
14 each receiving party must return all confidential material to the producing party,  
15 including all copies, extracts and summaries thereof. Alternatively, the parties  
16 may agree upon appropriate methods of destruction.

17 Notwithstanding this provision, counsel are entitled to retain one archival  
18 copy of all documents filed with the court, trial, deposition, and hearing  
19 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney  
20 work product, and consultant and expert work product, even if such materials  
21 contain confidential material.

22 The confidentiality obligations imposed by this agreement shall remain in  
23 effect until a designating party agrees otherwise in writing or a court orders  
24 otherwise.  
25  
26

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
DATED this 16<sup>th</sup> day of April, 2020.

POWELL, KUZNETZ &  
PARKER, P.S.

FISHER & PHILLIPS LLP

*/S/ LARRY J. KUZNETZ*  
*By: /S/ SARAH N. HARMON*  
Larry J. Kuznetz, WSBA #8697  
Sarah N. Harmon, WSBA #46493  
318 W. Boone Ave., Ste. 380  
Spokane, WA 99201-4151  
Phone: 509-455-4151  
Fax: 509-455-8522  
Email: [larry@pkp-law.com](mailto:larry@pkp-law.com)  
[sarah@pkp-law.com](mailto:sarah@pkp-law.com)  
*Attorneys for Plaintiffs*

*Approved via e-mail 4/16/20*  
*By: /S/ MARGARET A. BURNHAM*  
Catherine M. Morisset, WSBA #29682  
Margaret A. Burnham, WSBA #47860  
1201 Third Avenue, Suite 2750  
Seattle, WA 98101  
Phone: (206) 682-2308  
Email: [cmorisset@fisherphillips.com](mailto:cmorisset@fisherphillips.com)  
[mburnham@fisherphillips.com](mailto:mburnham@fisherphillips.com)  
*Attorneys for Defendant*

PURSUANT TO STIPULATION, IT IS SO ORDERED.

**IT IS FURTHER ORDERED** that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: April 17, 2020.



*Thomas O. Rice*  
The Honorable Thomas O. Rice.  
Chief United States District Judge

STIPULATED PROTECTIVE ORDER  
(19-00207) - Page 10

LAW OFFICES OF  
**POWELL, KUZNETZ & PARKER**  
A PROFESSIONAL SERVICE CORPORATION  
ROCK POINTE TOWER, 316 W. BOONE, STE. 380  
SPOKANE, WASHINGTON 99201-2346  
PHONE: (509)455-4151  
FAX: (509)455-8522

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare  
under penalty of perjury that I have read in its entirety and understand the  
Stipulated Protective Order that was issued by the United States District Court for  
the Eastern District of Washington on \_\_\_\_\_ [date] in the case of *Lynne  
Gardner et al. v. Wells Fargo Bank, NA*, Case No. 2:19-cv-00207-TOR. I agree  
to comply with and to be bound by all the terms of this Stipulated Protective Order  
and I understand and acknowledge that failure to so comply could expose me to  
sanctions and punishment in the nature of contempt. I solemnly promise that I will  
not disclose in any manner any information or item that is subject to this Stipulated  
Protective Order to any person or entity except in strict compliance with the  
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District  
Court for the Eastern District of Washington for the purpose of enforcing the  
terms of this Stipulated Protective Order, even if such enforcement proceedings  
occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_